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SENATE

REPORT
No. 93-347

TV BLACKOUT—PROFESSIONAL SPORTS

JULY 26, 1973.—Ordered to be printed

MR. PASTORE, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 1841]

The Committee on Commerce, to which was referred the bill (S. 1841) to amend the Communications Act of 1934 for 1 year with respect to certain agreements relating to the broadcasting of home games of certain professional athletic teams, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

BACKGROUND AND GENERAL STATEMENT

Any analysis of the Twentieth Century cultural and recreational life of the United States would have to devote considerable attention to organized athletics, especially the professional team sports—football, baseball, basketball, and hockey. Americans are avid spectators.

Countless millions of fans have attended professional games over the years, and the elaborate sports complexes with vast seating capacities in many major cities indicates attendance is increasing yearly.

In 1971, for example, over ten million people attended the 364 regular season games of the 26 National Football League teams. That attendance figure increased for the 1972 season.

In major league baseball, it is not uncommon for a team to draw over one million fans for its regular season. During the regular 1972 season almost 27 million people saw major league games.

The attendance figures for professional basketball and hockey also demonstrate that Americans are not only fans, they are active fans. They go to the ball park, the football stadium, the basketball and hockey arena.

The advent of nationwide television in the 1950's added another dimension to fan participation. It also added a lucrative source of revenue for the owners of these professional teams.

Super Bowl '72 was viewed in over 27 million homes, and last year's World Series was viewed in over 47 million.

In 1972, for example, the privilege of using the public airwaves to broadcast regular season NFL games meant an additional $1.5 million revenue to each of the 26 member clubs.

The cost of the local, regional and national major league baseball broadcast rights for the 1973 season exceeded $42 million. This money, of course, went to the club owners.

That the broadcasting industry is willing and able to pay such large amounts for broadcast rights attests to the widespread viewing interest of the public in these events. These games are a self-evident interest of viewing communities throughout the country.

When nationwide television became a reality, the fear was expressed that if the home games of professional teams were televised live attendance would suffer to the point where individual teams would be irreparably harmed financially. This, of course, would have affected the fan's interest as well. If his team were financially weak it would be unable to compete on the playing field.

As a consequence, professional football teams and many of the teams in other professional sports refrained from granting the right to telecast their home games locally.

In *United States* v. *National Football League*, 116 F. Supp. 319 (E.D. Pa. 1953), the Court concluded that the league restriction on televising of "outside" games into the home territory of another member team when that team was playing at home was reasonable, and not, therefore, in violation of the Sherman Act.

Subsequently, *United States* v. *National Football League*, 196 F. Supp. 445 (E.D. Pa. 1961), the NFL petitioned the Court for a construction of its 1953 decree which would accommodate a contract it had entered into with CBS which gave the network the exclusive right to televise league games for two years, and permitted CBS to decide which games would be televised. Prior to this contract, each NFL club had individually negotiated the sale of its own television rights. The 1961 pooled rights agreement was thus a significant change in the television policy of the league.

The Court felt the contract violated its 1953 judgment, however.

As a consequence, in 1961 Congress granted professional football, baseball, basketball, and hockey sport leagues two exemptions from the sanctions of the antitrust laws (15 U.S.C. Sections 1291–95). One exemption authorized agreements between professional sport leagues and television networks to pool and sell as a package the rights to televise league games. Such an agreement may not restrict telecasts of games in any area, "except within the home territory of a member club of the league on a day when such club is playing a game at home."

This "home territory" exception is the second antitrust exemption. It authorizes the restriction of game telecasts in the area surrounding the site of a game—the blackout. "Home territory", in the case of the NFL, is defined by its by-laws as "the surrounding territory to the extent of 75 miles in every direction from the exterior corporate limits of a [home] city. The NFL has generally applied the seventy-five mile standard in imposing blackouts.

Circumstances have changed substantially since the advent of television and the judicial decrees and legislation of the 1950's and 1960's.

Today over 95% of all stadia seats for all NFL regular season games are sold. While the percentage for the other professional sports leagues no where near approaches this, there are numerous instances where sell outs occur for individual games. And in some cases the entire season is sold out.

Because of the existing practice of refraining from telecasting home games locally when they are sold out local fans without tickets have no practical means of seeing or viewing their team.

This situation has caused considerable dissatisfaction throughout the country, as witnessed by the large number of complaints received by your Committee and individual members of Congress.

THE LEGISLATION

S. 1841 would prohibit any television broadcast licensee, cable telesion system, or network television broadcast organization from carrying out any contract or arrangement whereby the station, network or system is prevented from broadcasting or carrying the home games of any professional football, baseball, basketball or hockey team when tickets for admission to such game are no longer available for purchase by the general public 48 hours or more before the scheduled beginning time of such game.

The prohibition would terminate one year following the date of the enactment of the legislation.

Thus, whenever one of these teams utilizes the public airwaves, or CATV systems to carry its 'away games,' either under league pooling arrangements or individual contracts with broadcast licensees or CATV systems, it cannot make its sold-out home games unavailable for viewing over these facilities.

You Committee wishes to emphasize that this legislation is not intended to affect the protection from conflicting telecasts of professional football games accorded high schools and colleges by Section 3 of the Telecasting of Sports Contests Act (Public Law 87–331).

The privilege to use the public airwaves is conditioned upon and subject to the interest of the public in their larger and more effective use. This is a fundamental principle underlying our system of communications. All programming is subordinate to it.

Professional teams as well as broadcasters, television networks, and CATV systems reap lucrative financial rewards from the use of this public resource.

Under the circumstances, I believe that when fans are unable to attend the home games of a local professional team because tickets are unavailable, the public's overriding interest in the larger and more effective use of the airwaves should enable them to view these games.

In recommending this legislation, you Committee wishes to emphasize it is not attempting to regulate the business and contractual arrangements that exist between professional sports and the broadcasting and CATV industries. Rather, it is attempting to assure the public receives an adequate return for use of its property.

S. 1841 will expire one year after date of its enactment. At that time all affected parties will be able to assess its impact, and decide whether the public interest requires its continuance.

COMMITTEE HEARINGS

Although your Committee held no hearings on S. 1841, it held three days of extensive hearings on legislation in October 1972. *Hearings on S. 4007 and S. 4010, Subcommittee on Communications of the Committee on Commerce, October 3, 4, and 5, 1972, Serial No. 92–78.* That legislation would have amended the 1961 exemption from the antitrust laws.

With respect to the NFL pooling arrangements made possible by that exemption the testimony of the Department of Justice was particularly significant:

> Mr. KAUPER. * * *
>
> Clearly the NFL has benefitted. But the question raised by S. 4010 and S. 4007 is simply whether the exemption which brought this about ought to be further conditioned to satisfy the public interest as it now exists.
>
> Having received such an exemption, and thereby being allowed to engage in anticompetitive conduct not permitted in other industries, the NFL can surely be required to undertake certain activities in the public interest.
>
> In this context, the question before this committee can be stated as follows: Is there a sufficiently strong, legitimate public interest in desire [sic] of many of our citizens to see home game telecasts which should override the interest of the league in blackouts of home games?
>
> I think it unlikely that the proponents of continued antitrust immunity can support the burden which they must bear to outweigh public demand.
>
> It appears to us that professional football is enjoying unprecedented popularity. Many NFL clubs, finding themselves in what have been described as "natural monopoly markets," play every season game before capacity crowds.
>
> *Hearings on S. 4007 and S. 4010, page 35.*

At the Committee's urging, Commissioner Rozelle of the National Football League, announced on October 12, 1972, that the National Football League would televise the Super Bowl Game in Los Angeles, site of the game, if all tickets were sold by 10 days prior to its playing on January 14, 1973. He also said that the NFL would assemble the facts concerning the legal conflicts of stadium leases, stadium contracts with outside parties, radio and television contracts as well as practical considerations involved in altering its policy of not televising regular season games commerciallly. The result was to be submitted to the Committee.

On May 3, 1973, Commissioner Rozelle submitted the NFL study he had promised in the previous October.

The study consisted of data from stadium landlords, concessionnaires for food services and parking, and comments by a number of others relating to the legislation. Most of those commenting addressed themselves to the possible effect of "no shows" upon their revenues.

At that time Mr. Rozelle offered to lift the TV blackout for Super Bowl 1973; and to work out with the club owners an experiment for the last five home games of the New York Giants whereby the blackout would be lifted in the New Haven-Hartford, Conn., area.

In addition to the testimony it received from over twenty witnesses at the 1972 hearings, the Committee undertook a study of the provisions relating to local telecasts of home games in the stadium leases of the five teams cited in the NFL study.

Your Committee believes that nothing in the hearing record or its own investigation would support the contention that a limited experiment such as S. 1841 would cause irreparable harm to the viewing public or work an inequitable hardship on professional sports teams.

On the contrary, especially in the case of professional football, it appears that the public interest will be furthered substantially by enactment of S. 1841 because more fans will be able to view the team of their choice over airwaves which belong to them.

The chief contention made by those who support the present blackout policy is, that if the blackout were lifted, a significant increase in the number of "no shows" will result. This argument is highly speculative. The one year experience under this legislation should answer the question in a definitive and factual manner, however.

CONCLUSION

Professional sports teams reap substantial economic benefits from their use of a public resource.

Your Committee finds itself unable to reconcile this privilege with a policy which denies the public its sole opportunity to see the home game of its local team.

If a team chooses to avail itself of the valuable privilege to use the airwaves for "away games," it should not be permitted to restrict the public's enjoyment of viewing home games when they are sold out.[1] In your Committee's judgment, such a policy is incompatible with the public's interest in the larger and more effective use of television.

COST ESTIMATES PURSUANT TO SECTION 252 OF THE LEGISLATIVE REORGANIZATION ACT OF 1970

In accordance with Section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510, 91st Congress), the Committee estimates that no additional costs will accrue to the Government. The Committee is not aware of any estimate to the contrary.

AGENCY COMMENTS

Letter dated June 26, 1973 from Mr. Paul G. Dembling, Acting Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 26, 1973.

B-113531.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: With respect to your letter of May 31, 1973, requesting our views on S. 1841, 93d Congress, a bill to amend the Communications Act of

[1] Of course, should a team or league choose not to avail itself of the privilege in the first instance, they could not be required to carry home games.

1934 for one year with respect to certain agreements relating to the broadcasting of home games of certain professional athletic teams, this is to advise that we have no comments to offer.

Sincerely yours,

PAUL G. DEMBLING,
Acting Comptroller General of the United States.

APPENDIX A

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

NATIONAL FOOTBALL LEAGUE ET AL.,

DEFENDANTS.

Civ. A. No. 12808.

United States District Court

E. D. Pennsylvania.

July 20, 1961.

Proceeding on petition by professional football league and others for a construction of a final judgment which prohibited the defendants from making any agreement with the league, or any member club which would have the purpose or effect of restricting areas within which broadcasts or telecasts of games may be made. The District Court, Grim, J., held that the contract between the league and the broadcasting system which granted to the broadcasting system the exclusive right to televise all league games, with certain exceptions, and which gave broadcasting system the sole right to determine which games shall be telecast and where televised, violated judgment.

Order accordingly.

MONOPOLIES

Contract between professional football league and broadcasting system which gave broadcasting system sole right to televise all league games, with certain exceptions, and which gave system sole right to determine which games shall be telecast and where such games shall be televised, violated final judgment which prohibited defendant league and clubs from making any agreement with league or member club having purpose or effect of restricting areas within which broadcasts or telecasts of games may be made. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

Walter E. Alessandroni, U.S. Atty., Donald G. Balthis, Acting Chief, Middle Atlantic Office, Antitrust Division, Philadelphia, Pa., for plaintiff.

Francis W. Sullivan, Strong, Sullivan, Saylor & Ferguson, Thomas Hart, Cornelius C. O'Brien, Jr., Alfred W. Putnam, Harry Shapiro, Hirsh W. Stalberg, Philadelphia, Pa., for defendants.

GRIM, District Judge.

Defendants have filed a petition [1] seeking a construction of the final judgment entered in this case on December 28, 1953, to the effect that a contract dated April 24, 1961, between the National Football League and the Columbia Broadcasting System does not violate the final judgment. The government contends that the contract does violate the judgment. The 1961 contract grants to CBS for a period of two years the sole and exclusive right to televise all League games, with certain limited exceptions.[2] After certain deductions the League will distribute equally among the fourteen teams which now comprise the League the $4,650,000 annual license fee to be paid under the contract. The government opposes the petition and by a cross-petition seeks restoration of the situation as it existed prior to the execution of the contract, (called, in the cross-petition, restoration of the status quo ante).

The government originally commenced this action by filing a complaint on October 9, 1951, charging that the defendant clubs of the National Football League, and the League itself, combined and conspired to violate the Sherman Anti-Trust Act, 15 U.S.C.A. § 1 et seq. After trial, the court filed an opinion dated November 12, 1953, D.C., 116 F. Supp. 319, finding that certain League by-laws did and certain by-laws did not violate the Sherman Act. A judgment was entered accordingly. It is this judgment that defendants seeks to have construed.

Defendants concede that the 1961 NFL–CBS contract makes a basic change in National Football League television policy. Prior to this contract each member club individually negotiated and sold the television rights to its games to sponsors or telecasters with whom it could make satisfactory contracts. The NFL–CBS contract sharply departs from this practice. It is implicit in the 1961 contract that the member clubs have agreed among themselves and with the League that each club will not sell its television rights separate and apart from those of the other clubs, but that each will pool its television rights with those of all of the other clubs, and that only the resulting package of pooled television rights will be sold to a purchaser. The clubs authorized the Commissioner of the League to sell this package of pooled television rights, and under the provisions of the 1961 contract with CBS he sold it. Thus, by agreement, the member clubs of the League have eliminated competition among themselves in the sale of television rights to their games.

Section V of the Final Judgment enjoins [3] the defendants from making any agreement with the League or any member club.

"* * * having the purpose or effect of restricting the areas within which broadcasts or telecasts of games * * * may be made * * *"

As defendants state in their petition for construction: [4]

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[1] In accordance with Section XIII of the Final Judgment, retaining jurisdiction to enable parties to apply "for such further orders and directions as may be necessary or appropriate for the construction * * * of any of the provisions of this Final Judgment * * *."

[2] Not included are (1) the rights to televise the World's Championship Professional Football Game between the winners of the championship of each division of the League and (2) a small number of certain other post-season and pre-season games, the net proceeds of which are allocated to the participating players, the League's Player Pension Fund or to charity. Generally speaking, the contract permits CBS to decide which games shall be telecast.

[3] With provisos not pertinent here.

[4] While the contract does not appear in the record, this part of the contract and this construction of it is not disputed by the parties. Nor is there a dispute as to the other provisions of the contract mentioned in this opinion.

"Said contract provides that the network [CBS] shall have the right to determine, entirely within its own discretion without consulting the Commissioner or any club of the League which games shall be telecast and where such games be televised * * *" [5]

Clearly this provision restricts the individual clubs from determining "the areas within which * * * telecasts of games * * * may be made * * *," since defendants have by their contract given to CBS the power to determine which games shall be telecast and where the games shall be televised. I am therefore obliged to construe the Final Judgment as prohibiting the execution and performance of the contract dated April 24, 1961, between the National Football League and the Columbia Broadcasting System.

The government may submit an order in accordance with this opinion construing the final judgment and/or ruling on the petition to restore the status quo ante.

APPENDIX B

CHAPTER 32.—TELECASTING OF PROFESSIONAL SPORTS CONTESTS

Sec.

§ 1291. Exemption from antitrust laws of agreements covering the telecasting of sports contests and the combining of professional football leagues.

The antitrust laws, as defined in section 12 of this title or in the Federal Trade Commission Act, as amended shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs. In addition, such laws shall not apply to a joint agreement by which the member clubs of two or more professional football leagues, which are exempt from income tax under section 501(c)(6) of Title 26, combine their operations in expanded single league so exempt from income tax, if such agreement increases rather than decreases the number of professional football clubs so operating, and the provisions of which are directly relevant thereto. (Pub. L. 87–331, § 1, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89–800, § 6(b)(1), Nov. 8, 1966, 80 Stat. 1515.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in the text, is classified to section 41 et seq. of this title.

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[5] There were certain limiting restrictions, not pertinent here, such as that no games should be telecast in the home territory of a club without the consent of such clubs, when such clubs were playing at home.

AMENDMENTS

1966—Pub. L. 89–800 extended the exemption from antitrust laws to include a joint agreement by which the member clubs of two or more professional football leagues combine their operations in an expanded single league.

SAVINGS PROVISION

Section 6 of Pub. L. 87–331 provided that: "Nothing in this Act [this chapter] shall affect any cause of action existing on the effective date hereof [Sept. 30, 1961] in respect to the organized professional team sports of baseball, football, basketball, or hockey."

CROSS REFERENCES

Federal Trade Commission Act, definition of antitrust acts, see section 44 of this title.

Intercollegiate and interscholastic football contest, applicability to agreements limiting, see section 1293 of this title.

Joint agreements prohibiting area telecasting, applicability to see section 1292 of this title.

Professional sports contests, applicability to agreements concerning other activities, see section 1294 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1292, 1293, 1294 of this title.

§ 1292. Area telecasting restriction limitation.

Section 1291 of this title shall not apply to any joint agreement described in the first sentence in such section which prohibits any person to whom such rights are sold or transferred from televising any games within any area, except within the home territory of a member club of the league on a day when such club is playing a game at home. (Pub. L. 87–331, § 2, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89–800, § 6(b)(2), Nov. 8, 1966, 80 Stat. 1515.)

AMENDMENTS

1966—Pub. L. 89–800 substituted "described in the first sentence of such section" for "described in such section".

§ 1293. Intercollegiate and interscholastic football contest limitations.

The first sentence of section 1291 of this title shall not apply to any joint agreement described in such section which permits the telecasting of all or a substantial part of any professional football game on any Friday after six o'clock postmeridian or on any Saturday during the period beginning on the second Friday in September and ending on the second Saturday in December in any year from any telecasting station located within seventy-five miles of the game site of any intercollegiate or interscholastic football contest scheduled to be played on such a date if—

(1) such intercollegiate football contest is between institutions of higher learning both of which confer degrees upon students following completion of sufficient credit hours to equal a four-course, or

(2) in the case of an interscholastic football contest, such contest is between secondary schools, both of which are accredited or certified under the laws of the State or States in which they

are situated and offer courses continuing through the twelfth grade of the standard school curriculum, or the equivalent, and

(3) such intercollegiate or interscholastic football contest and such game site were announced through publication in a newspaper of general circulation prior to August 1 of such year as being regularly scheduled for such day and place.

(Pub. L. 87–331, § 3, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89–800, § 6(b)(3), Nov. 8, 1966, 80 Stat. 1515.)

AMENDMENTS

1966—Pub. L. 89–800 substituted "The first sentence of section 1291 of this title" for "Section 1291 of this title" at the beginning of the section, extended the limitation granted for football contests on game sites located within 75 miles of telecasting stations to include interscholastic contests, redesignated clause (2) as clause (3), added a new clause (2), and, in clause (3) as so redesignated, substituted "newspaper of general circulation prior to August 1" for "daily newspaper of general circulation prior to March 1" as the description of the type newspaper required for the announcement of the game site of intercollegiate or interscholastic football games.

§ 1294. Antitrust laws unaffected as regards to other activities of professional sports contests.

Nothing contained in this chapter shall be deemed to change, determine, or otherwise affect the applicability or nonapplicability of the antitrust laws to any act, contract, agreement, rule, course of conduct, or other activity by, between, or among persons engaging in, conducting, or participating in the organized professional team sports of football, baseball, basketball, or hockey, except the agreements to which section 1291 of this title shall apply. (Pub L. 87–331, § 4, Sept. 30, 1961, 75 Stat. 732.)

REFERENCES IN TEXT

The "antitrust laws" referred to in text are classified generally to this title.

§ 1295. "Persons" defined.

As used in this chapter, "persons" means any individual, partnership, corporation, or unincorporated association or any combination or association thereof. (Pub. L. 87–331, § 5, Sept. 30, 1961, 75 Stat. 732.)

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